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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/684,008	10/06/2000	Timothy A.M. Chuter	ENDOV-54176	9810

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[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

3738

DATE MAILED: 11/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/684,008	CHUTER, TIMOTHY A.M.
	<b>Examiner</b>	<b>Art Unit</b>
	Urmi Chattopadhyay	3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 August 2002.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 8-10 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 and 7 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 October 2000 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5,6.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, subspecies 1b and 2b in Paper No. 8 is acknowledged.
2. Claims 6, 8-10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group and subspecies, there being no allowable generic or linking claim.

### ***Oath/Declaration***

- 3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:  
It does not say that the inventor is a sole inventor.

### ***Claim Objections***

4. Claim 7 is objected to because of the following informalities:
- a. On line 2, "an" should be changed to --a-- after "having" and "with".
- ✓ b. On line 8, "pf" should be changed to --of--.
- c. On line 11, Examiner suggests changing "second leg's inferior end" to --inferior end of the second leg-- to be commensurate with the language of the rest of the claim.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

→ 6. Claim 1 is indefinite because it is not possible for the at least one attachment system to be compressible between the two conditions of compressed and expanded. Examiner suggests rewording the clause as --and the at least one attachment system being compressible and expandable radially between an expanded and compressed condition-- or --and the at least one attachment system being compressible radially from an expanded condition to a compressed condition--.

✓ 7. Claim 2 recites the limitation "the feeding step" in line 1. There is insufficient antecedent basis for this limitation in the claim.

→ 8. Claim 4 recites the limitation "the bore" in line 8. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who

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has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

10. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Taheri (USPN 5,948,017 as cited in applicant's IDS).

Taheri discloses an apparatus and method for engrafting a blood vessel with all the elements of claim 1. See Figures 4-10 for the percutaneous insertion of a graft (10) supported by at least one attachment system (40) within the vasculature system of a patient, the graft capable of assuming a compressed condition (Figures 6A-6B) and an uncompressed condition (Figure 8), and the at least one attachment system being having compressed (Figure 8) and expanded (Figures 9-10). The method comprises percutaneously inserting and positioning the graft into the vasculature adjacent a diseased portion of the vasculature system (Figures 4-7), subsequently inserting and implanting the at least one attachment system into the graft to form a seal between the graft and the vascular wall (Figures 9-10).

Claim 2, see Figures 4-10 for direct percutaneous insertion of the graft and then the at least one attachment system.

Claim 3, see Figures 6-7 for inserting the graft in a compressed condition by direct percutaneous insertion into a point of access to the vascular system over a prepositioned guidewire (21), columns 4-5, lines 64-3 for applying traction force to opposing ends of the graft

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to control the position of the graft within the vasculature, and Figure 7 for activating the graft from its compressed condition to its uncompressed condition.

Claim 4, see columns 4-5, lines 64-3 for applying a traction force to opposing ends of the graft to control the position of the graft within the vasculature, Figure 8 for inserting the at least one attachment system in compressed condition by direct percutaneous insertion over a prepositioned wire (21), Figure 9 for positioning and expanding the at least one attachment system with the graft from its compressed to expanded condition.

*Allowable Subject Matter*

11. Claims 5 and 7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Urmie Chattopadhyay whose telephone number is (703) 308-8510 and whose work schedule is Monday-Friday, 9:00am – 6:30pm with every other Friday off. The examiner's supervisor, Corrine McDermott, may be reached at (703) 308-2111. The group receptionist may be reached at (703) 308-0858.

Should the applicant wish to send a fax for official entry into the file wrapper the Group fax number is (703) 305-3590. Should applicant wish to send a fax for discussion purposes only, the art unit fax number is (703) 308-2708.



Urmie Chattopadhyay

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David J. Sabella  
Primary Examiner

uc

November 20, 2002